

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wayne Analyst: Kristina North Bill Number: AB 486
Related Bills: See previous analysis Telephone: 845-6978 Amended Date: April 5, 1999
Attorney: Patrick Kusiak Sponsor: CA Law Revision Comm.

SUBJECT: Administrative Law/State Agency Regulations Advisory Interpretations

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 18, 1999.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 18, 1999, STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Government Code, Administrative Procedures Act (APA), this bill defines and allows a state agency to adopt an advisory interpretation upon completion of specified procedures. This bill also would allow an interested person to petition a state agency to adopt an advisory interpretation.

The April 5, 1999, amendment makes minor changes to the advisory interpretation adoption procedures and establishes a special regulatory procedure for regulations determined by the promulgating state agency to be noncontroversial. This consent regulatory procedure could not be used if adverse public comment is received on a proposed regulatory action.

The department promulgates regulations when necessary to clarify complex provisions of tax law. Proposed regulations often generate significant comment and input from tax practitioners and taxpayers. As a result, the department may not be able to utilize the consent regulatory procedure. However, if the department were to use the consent regulatory procedure, it should not significantly impact the department's policies, programs or the collection of state income tax.

Except for these changes, the remainder of the department's analysis of the bill as introduced December 7, 1998, still applies. The previously discussed implementation considerations are restated below.

IMPLEMENTATION CONSIDERATIONS

- ♦ The Revenue and Taxation Code currently provides for written request by taxpayers for general or specific information, which generally follows the IRS method for providing taxpayer guidance.

Board Position:

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<u> </u> SA	<u> </u> O	<u> </u> NAR
<u> </u> X N	<u> </u> OUA	<u> </u> PENDING

Department/Legislative Director Date

Johnnie Lou Rosas 05/10/1999

This bill's procedure could be confusing to taxpayers since taxpayers already have a statutory vehicle for obtaining written guidance concerning tax laws. Moreover, existing law provides a remedy for relief of interest and/or taxes that would not be available to the taxpayer through the procedure created by this bill.

- ◆ If an advisory interpretation is not approved by OAL, this bill does not specify how or if the written agency interpretation would be impacted.
- ◆ The bill may create confusion between the department's current practice of issuing Legal Rulings in reliance on the APA exception to the definition of "regulation," a practice unaffected by this bill, and the "advisory interpretation" procedure added by this bill.
- ◆ This bill would provide that the advisory opinion would be available through OAL; however, this may violate existing non-disclosure statutes prohibiting the disclosure of taxpayer information to the extent that confidential tax information is contained in the opinion.

Department staff is available to assist the author's office in resolving these and any other concerns.